

ORDINANCE NO. 46-594

AN ORDINANCE AMENDING SECTIONS 3.95.030, 3.95.080 AND 3.95.110 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO TRANSIENT MERCHANTS AND TEMPORARY SALES OF CERTAIN MERCHANDISE WITHIN THE CITY, AND REPEALING THE ORIGINALS OF SAID SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.95.030 of the Code of the City of Wichita, Kansas, shall read as follows:

“Exceptions. (a) A person engaging in the following activities shall not be considered a transient merchant for the purposes of this chapter, and the licensing provisions required herein shall not apply:

(1) Sales at wholesale to retail merchants by commercial travelers or selling agents in the usual course of business;

(2) sales of merchandise by exhibiting samples, or by catalogue or brochure for future delivery;

(3) sales conducted within trade centers, convention centers, shopping malls and exhibition halls located in hotels or motels;

(4) sales or displays at fairs, expositions, or promotional events where such activity is sponsored by the City, or another governmental entity;

(5) sales or displays at sales, events, bazaars, athletic events, or concessions sponsored or operated by public or private schools,

educational institutions, civic organizations, or not-for-profit organizations provided that:

- a. Such sale is conducted wholly by members of the nonprofit group, and
- b. Such sale is conducted upon any school, church, or nonprofit organization's property, or
- c. within a building, or
- d. under a roof canopy or projection, or within 10 feet of such canopy or projection, or
- e. within 10 feet of the exterior walls of a building.

(6) auctions, as regulated by Chapter 3.36 of this code;

(7) garage, or miscellaneous sales, as regulated by Chapter 3.44 of this code;

(8) sales of Christmas trees and other seasonal items as regulated by Chapter 3.44 of this code;

(9) sales that are considered Street and Sidewalk vending, and are regulated by Chapter 3.97 of this code;

(10) sales that are authorized by Wichita Festivals, Inc., pursuant to Chapter 3.14 of this code;

(11) sales of agricultural products, nursery products and foliage plants through an organized farmer's market;

(12) isolated sales upon public sidewalks for which a permit has been issued as required by Section 10.04.131 of the city code;

(13) sales of agricultural, farm, garden , aquacultural products, or fruits grown within the State of Kansas by producers or growers and their agents; and

(14) sales of newspapers.

(b) A transient merchant not otherwise exempted from the provisions of this Chapter shall not be relieved or exempted from the provisions of this Chapter by reason of temporary association with any local dealer, auctioneer, trader, contractor or merchant or by conducting a temporary or transient business in connection with or in the name of any local dealer, auctioneer, trader, contractor or merchant.”

SECTION 2. Section 3.95.080 of the Code of the City of Wichita, Kansas, shall read as follows:

“Issuance of license. (a) A transient merchant’s license may be issued only upon completion of the application, payment of fees, and a showing that the business, activity, or licensee is not proposing to operate in violation of the prohibited acts stated in Section 3.95.110 or in violation of any state, federal or local law. Application for a transient merchant’s license shall be made not less than 5 business days prior to the date(s) for which the activity is scheduled. Upon receipt of a properly completed application for a transient merchant license, the city treasurer shall refer the application to the appropriate city departments for investigation and recommendation regarding issuance of the license. Such

recommendations shall be made and the license either approved or denied within 5 business days of the receipt of both the properly completed application and the required license fee. The license shall be approved by the Superintendent of the

Office of Central Inspection, or his or her designee. Failure to make a decision regarding issuance of the license within 5 business days shall be considered approval of the license.

(b) If a license is not issued, written notice shall be mailed or hand delivered to the applicant indicating the reason for the denial, and shall also set forth information regarding the right of the applicant to appeal the denial.

(c) The issuance of a license shall not constitute approval of the activity or otherwise prohibit enforcement of this chapter or any other laws, and further, shall not authorize the licensee to operate his or her business in violation of the Wichita-Sedgwick County Unified Zoning Code, as set forth in Title 28 of this code.

(d) Unless approved by the City of Wichita's Community Events Committee as part of an event which has been issued a community event's permit, no more than one transient merchant license will be issued for a zoning lot during the same, or for overlapping time periods. The term "zoning lot" shall be as defined in Title 28 of this code."

SECTION 3. Section 3.95.110 of the Code of the City of Wichita, Kansas, shall read as follows:

"Prohibited acts. It is unlawful for any transient merchant to:

(a) Conduct business or carry on activities in violation of any zoning requirements of the city, including setback requirements;

(b) Use any electronic device for amplification in an outdoor area or to otherwise create, or gather people who create, noise sufficient so as to disturb surrounding residential or commercial areas, in violation of Chapter 7.41 of the city code.

(c) Provide any false or misleading information in completion of the license application;

(d) Fail to obtain permission of the property owner where such activity is being conducted;

(e) Fail to provide, at the request of the purchaser or customer, a written receipt for purchases exceeding \$5.00 (five dollars);

(f) Fail to provide any customer, or other such person, her or his name, the name of the company or organization represented, the name of the product, or make any representation as to identity which is false or misleading;

(g) Fail to allow authorized law enforcement officers or other enforcement officers of the city to enter into or upon the premises or to otherwise interfere with any inspection of the premises or business;

(h) Fail to remove any structure, device, trash, or debris caused, created or associated with the transient merchant's activities in an outdoor area;

(i) Erect or display more than one sign or any sign greater than 16 square feet in total area, however, a sign permit shall not be required for this single, 16 square foot sign, and further, streamers, pennants, search lights and any device with flashing, blinking, rotating or moving action are

prohibited from use, and no sign shall be placed upon the public right-of-way;

(j) Erect or construct any structure, tent, or building greater than 150 square feet in size, unless a building permit for a larger structure, tent or building is obtained;

(k) Conduct business or carry on activities within 50 feet of any driveway entrance or access lane from a public street to an existing business;

(l) Conduct business or carry on activities within the city right-of-way or other publicly owned property;

(m) The business or activities of a transient merchant must be upon property that is accessory to an existing primary use;

(n) Conduct or carry on more than one transient merchant business or activity on the same zoning lot at any one time;

(o) Conduct business or carry on activities other than between the hours of 7:00 a.m. and 12:00 midnight.

Relating to the location and placement of transient merchant activities, subsections (a), (i), (k), (l) and (n) shall not be applicable to transient merchants who participate in a community event which has been approved and issued a permit by the City of Wichita's Community Event Committee pursuant to the ordinances of the City of Wichita."

SECTION 4. The originals of Sections 3.95.030, 3.95.080 and 3.95.110 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 5. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication in the official city newspaper.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of May, 2005.

Carlos Mayans, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law